

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF MASSACHUSETTS,
STATE OF COLORADO, STATE OF
CONNECTICUT, STATE OF DELAWARE,
DISTRICT OF COLUMBIA, STATE OF
ILLINOIS, STATE OF MARYLAND, STATE
OF MICHIGAN, STATE OF MINNESOTA,
STATE OF NEVADA, STATE OF NEW
JERSEY, STATE OF NEW MEXICO, STATE
OF OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF RHODE
ISLAND, STATE OF VERMONT,
COMMONWEALTH OF VIRGINIA, and
STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; CHAD F. WOLF, in
his official capacity as Acting Secretary of
Homeland Security; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; and MATTHEW
T. ALBENCE, in his official capacity as Acting
Director of U.S. Immigration and Customs
Enforcement,

Defendants.

Civil Action No. 20-11311

REQUEST FOR ORAL ARGUMENT

**PLAINTIFF STATES' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65(a), Plaintiffs ("States") move for the issuance of a temporary restraining order and/or preliminary injunction enjoining the Defendants from implementing or enforcing the policy announced in the July 6, 2020 Broadcast Message ("July 6

Directive") issued by the United States Immigration and Customs Enforcement regarding the Student and Exchange Visitor Program.¹

As grounds for this Motion, the States rely on the accompanying declarations listed on Exhibit A attached to this Motion, their Complaint, and Memorandum of Law in Support of their Motion for Temporary Restraining Order and Preliminary Injunction. In addition, for the convenience of the Court and for consistency with the related case *President and Fellows of Harvard College v. U.S. Department of Homeland Security*, No. 1:20-cv-11283-ADB, the Plaintiffs rely on the Proposed Preliminary Injunction Order submitted by the plaintiffs in that matter, ECF Doc. 30-1, filed July 10, 2020.

In support of this Motion, the States state as follows. The Court should enter a temporary restraining order and/or preliminary injunction enjoining the Defendants from implementing or enforcing the July 6 Directive because the States are likely to succeed on the merits of their claims; because the States will suffer irreparable harm if the requested relief is not granted; and because the balance of harms as well as the public interest both powerfully favor granting the requested relief.

The States are likely to succeed on the merits of their claims that the Directive was arbitrary and capricious, because it failed to offer a reason for its reversal of prior policy; failed to consider the substantial reliance interests of universities and foreign students on the agency's prior guidance and the harms this abrupt reversal will cause; failed to consider—or outright disregarded—the evidence that the COVID-19 emergency is continuing unabated; and required immediate compliance without affording schools and their students sufficient time to alter plans

¹ Student and Exchange Visitor Program, Broadcast Message: COVID-19 and Fall 2020, at 1 (July 6, 2020), <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf>.

made in reliance on prior policy. Moreover, the Directive was adopted without proper procedure.

The States will suffer irreparable harm absent the requested injunction, in the form of harms to their proprietary interests (including costs of increasing in-person instruction, costs of losing international students, administrative costs, and costs to their institutions' educational missions); harms to their sovereign interests (including their interest in regulating their public colleges and universities to ensure public health and safety, and their interest in preserving their flexibility to respond to evolving health and safety conditions); and harms to their quasi-sovereign interests in the health and economic welfare of their residents. For similar reasons, the balance of harms as well as the public interest both powerfully favor granting the requested injunction.

Wherefore, the States ask the Court to enter an order in the form of the Proposed Preliminary Injunction Order submitted by Plaintiffs in the related matter *President and Fellows of Harvard College v. U.S. Department of Homeland Security*, No. 1:20-cv-11283-ADB, ECF Doc. 30-1, filed July 10, 2020. The States request a hearing at the Court's earliest convenience and are available at 3pm on Tuesday, July 14, 2020.

Date: July 13, 2020

Respectfully submitted,

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts

/s/ Abigail B. Taylor _____
Abigail B. Taylor
Elizabeth N. Dewar
Katherine B. Dirks
Julie E. Green
Angela R. Brooks (admission pending)
Andrew J. Haile
Abrisham Eshghi
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel. (617) 727-2200
abigail.taylor@mass.gov
bessie.dewar@mass.gov
katherine.dirks@mass.gov
julie.green@mass.gov
angela.brooks@mass.gov
andrew.haile@mass.gov
abrisham.eshghi@mass.gov

PHILIP J. WEISER
Attorney General
State of Colorado

/s/ Eric Olson
Eric R. Olson*
Solicitor General
Jacquelynn N. Rich Fredericks*
First Assistant Attorney General
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, Colorado 80203
eric.olson@coag.gov
jacquelynn.richfredericks@coag.gov

WILLIAM TONG
Attorney General
State of Connecticut

/s/ Joshua Perry
Joshua Perry*
Special Counsel for Civil Rights
Office of the Attorney General
165 Capitol Avenue
Hartford, Connecticut 06106
joshua.perry@ct.gov

KATHLEEN JENNINGS

Attorney General
State of Delaware

/s/ Christian Wright

Christian Douglas Wright*
Director of Impact Litigation
Vanessa L. Kassab*
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 5th Floor
Wilmington, Delaware 19801
christian.wright@delaware.gov
vanessa.kassab@delaware.gov

KARL A. RACINE

Attorney General
District of Columbia

/s/ Kathleen Konopka

Kathleen Konopka*
Deputy Attorney General, Public Advocacy
Division
Brendan B. Downes*
Nicole Hill*
Assistant Attorneys General, Public Advocacy
Division
Office of the Attorney General for the District
of Columbia
441 4th St., N.W. Suite 630S
Washington, DC 20001
Kathleen.Konopka@dc.gov

KWAME RAOUL

Attorney General
State of Illinois

/s/ Kathryn Hunt Muse

Kathryn Hunt Muse*
Deputy Chief, Public Interest Division
Joseph Sanders*
Supervising Attorney, Consumer Fraud Bureau
Elizabeth Morris*
Assistant Attorney General, Special Litigation
Bureau
Office of the Illinois Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Tel. (312) 814-3000
kmuse@atg.state.il.us
jsanders@atg.state.il.us
emorris@atg.state.il.us

BRIAN E. FROSH

Attorney General
State of Maryland

/s/ Steven M. Sullivan

Steven M. Sullivan*
Solicitor General
Katherine Bainbridge*
Jeffrey P. Dunlap*
Assistant Attorneys General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Tel. (410) 576-6427
ssullivan@oag.state.md.us

DANA NESSEL

Attorney General
State of Michigan

/s/ Fadwa A. Hammoud

Fadwa A. Hammoud*
Solicitor General
Toni L. Harris*
Assistant Attorneys General
Michigan Department of Attorney General
P.O. Box 30758
Lansing, Michigan 48909
Tel. (517) 335-7603
HammoudF1@michigan.gov
Harrist19@michigan.gov

KEITH ELLISON

Attorney General
State of Minnesota

/s/ Tom Madison

Tom Madison*
Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street
Suite 900
St. Paul, Minnesota 55101
Tel. (651) 757-1301
thomas.madison@ag.state.mn.us

AARON D. FORD

Attorney General
State of Nevada

/s/ Heidi Parry Stern

Heidi Parry Stern*
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
HStern@ag.nv.gov

GURBIR S. GREWAL

Attorney General
State of New Jersey

/s/ Elspeth L. Faiman Hans

Elspeth Faiman Hans*
Deputy Attorney General
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625
Tel. (609) 376-2752
elspeth.hans@law.njoag.gov

HECTOR BALDERAS

Attorney General
State of New Mexico

/s/ Tania Maestas

Tania Maestas*
Chief Deputy Attorney General
PO Drawer 1508
Santa Fe, New Mexico 87504-1508
tmaestas@nmag.gov

ELLEN F. ROSENBLUM

Attorney General
State of Oregon

/s/ Heather J. Van Meter

Heather J. Van Meter*
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301
Tel. (503) 947-4700
Heather.j.vanmeter@doj.state.or.us

JOSH SHAPIRO

Attorney General
Commonwealth of Pennsylvania

/s/ Michael J. Fischer

Michael J. Fischer*
Chief Deputy Attorney General
Pennsylvania Office of Attorney General
1600 Arch St., Suite 300
Philadelphia, Pennsylvania 19103
mfischer@attorneygeneral.gov

PETER F. NERONHA

Attorney General
State of Rhode Island

/s/ Shannon Haibon

Shannon L. Haibon*
Special Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
shaibon@riag.ri.gov

THOMAS J. DONOVAN, JR.

Attorney General
State of Vermont

/s/ Benjamin Battles

Benjamin D. Battles*
Solicitor General
Julio A. Thompson*
Assistant Attorney General, Civil Rights Unit
Office of the Vermont Attorney General
109 State Street
Montpelier, Vermont 05609
benjamin.battles@vermont.gov
julio.thompson@vermont.gov

MARK HERRING

Attorney General
Commonwealth of Virginia

/s/ Jessica Samuels

Jessica Merry Samuels*
Assistant Solicitor General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Tel. (804) 786-6835
solicitorgeneral@oag.state.va.us

JOSH KAUL
Attorney General
State of Wisconsin

/s/ Anne Bensky
Anne M. Bensky*
Assistant Attorney General
State of Wisconsin Department of Justice
Division of Legal Services
17 W. Main Street
Madison, Wisconsin 53707-7857
benskyam@doj.state.wi.us
Tel. (608) 264-9451

**Pro hac vice* motions will be forthcoming.

RULE 7.1 CERTIFICATE

I, Abigail B. Taylor, hereby certify that counsel for the Plaintiffs provided notice of the foregoing motion to counsel for the Defendants by email on July 12, 2020 and attempted to confer in good faith in an effort to resolve or narrow the issues.

/s/ Abigail B. Taylor

CERTIFICATE OF SERVICE

I, Abigail B. Taylor, counsel for Plaintiffs, hereby certify that this document has been filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). On July 13, 2020, this document was delivered by hand and by email to:

United States Attorney for the District of Massachusetts
Attn: Rayford A. Farquhar, Esq.
United States Attorney's Office
John Joseph Moakley Federal Courthouse
1 Courthouse Way
Suite 9200
Boston, MA 02210
617-748-3100
617-748-3971 (fax)
rayford.farquhar@usdoj.gov

and was sent by certified mail to the following:

United States Department of Homeland Security
2707 Martin Luther King Jr. Ave., S.E.
Washington, D.C. 20528

United States Immigration and Customs Enforcement
500 12th St., S.W.
Washington, D.C. 20536

The Hon. Chad F. Wolf
Acting Secretary of Homeland Security
United States Department of Homeland Security
2707 Martin Luther King Jr. Ave., S.E.
Washington, D.C. 20528

Matthew Albence
Acting Director of United States Immigration and Customs Enforcement
United States Immigration and Customs Enforcement
500 12th St., S.W.
Washington, D.C. 20536

/s/ Abigail B. Taylor